IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.271 OF 1998

The Commissioner of Income-tax ..Applicant.

V/s.

Pent Ocean Stemship P.Ltd. ..Respondent.

Mr.A.S.Rao for applicant.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 15TH MARCH, 2005.

P.C. :-

1. In this reference, the questions referred for the opinion of this Court read as under :-

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure incurred by the assessee, which is a shipping company resident in India, on payment of salary and provision of perquisites to its employees working aboard its ships, to the extent the expenditure pertains to the period during which the ships plying under the Indian Flag are outside Indian territory, should be construed as expenditure incurred in relation to the employees in respect of their period of employment outside India within the meaning of clause (b) (i) of the additional proviso to sec.40A(5) of the

Income-tax Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in the computation of disallowance in respect of expenditure incurred on employee directors, the limits under sec.40(c) of the Income-tax Act are applicable and not those under section 40A(5) of the Act ? "

2. So far as the first question is concerned, the same has been answered by the Division Bench of this Court in the case **C.I.T. V/s. Indo Oceanic Shipping Co. Ltd. [(2001) 247 I.T.R. 247 (Bom.)**; whereas the second question has also been answered by another Judgment of the Division Bench of this Court in the case of **C.I.T. V/s. Hico Products Pvt.Ltd. (No.1) [(1993) 201 I.T.R. 567 (Bom.)]**.

3. In the above view of the matter, both the questions are answered in the affirmative i.e. in favour of the assessee and against the revenue. Accordingly, reference stands disposed of with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)